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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 25, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

AIRCABLE OF ROANOKE, LLC,  
DIGITAL BROADCAST CORPORATION,  
Defendants

CASE NO. SEC000069  
CASE NO. SEC000072

FINAL ORDER AND JUDGMENT

By Rule to Show Cause issued against AirCable of Roanoke, LLC ("AirCable") dated October 21, 2000 and Motion for Temporary Injunction issued against AirCable and Digital Broadcast Corporation ("Digital") dated November 9, 2000, the Commission assigned this case to Alexander F. Skirpan, Jr., Hearing Examiner, to conduct a hearing for the Commission. The Hearing Examiner issued his Report setting forth his recommended findings of fact and conclusions of law on December 19, 2000. Upon consideration of the Report and the record in this case, the Commission is of the opinion and finds as follows:

(1) AirCable is a Virginia limited liability company that maintains its offices in Salem, Virginia.

(2) Digital is a Delaware corporation that maintains its offices in Nassau County, New York and is the managing corporation for AirCable.

(3) The Rule to Show Cause and the Motion for Temporary Injunction were duly served upon the defendants as required by law.

(4) At hearing, AirCable filed an Assertion of Statutory and Constitutional Privileges ("Privileges Motion") and a Motion to Quash or Otherwise Modify Scope of Subpoena ("Motion to Quash"). The Hearing Examiner noted the Privileges Motion and took the Motion to Quash under advisement.

(5) A copy of the Report of Hearing Examiner ("Report") was filed on December 27, 2000 and mailed to the defendants.

(6) Defendants filed comments to the Report on January 8, 2001 and a Reply Brief on January 16, 2001.

(7) Defendants offered and sold securities in Virginia in violation of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

(8) AirCable has failed to show legal justification or excuse for its refusal to produce documents pursuant to the Commission's subpoena.

(9) There is no basis for AirCable's Motion to Quash.

(10) There is a sufficient basis for granting the Motion for Temporary Injunction.

Accordingly, IT IS ADJUDGED AND ORDERED THAT:

(1) Pursuant to § 13.1-519 of the Act, the Motion for Temporary Injunction dated November 9, 2000, is granted for a period of one hundred twenty days (120) beginning from the date of entry of this Order.

(2) The Motion to Quash is hereby denied.

(3) Pursuant to §§ 12.1-33 of the Code of Virginia and 12.1-521 of the Act, AirCable is penalized in the sum of five thousand dollars (\$5,000) which sum the Commonwealth shall recover from said defendant with interest at nine percent (9%) per year until paid.

(4) Pursuant to § 12.1-33 of the Code of Virginia, AirCable shall be subject to a daily penalty of five thousand dollars (\$5,000) per day beginning fourteen (14) days from the date of the entry of this Order and continuing until AirCable provides all of the documents ordered to be produced by the Commission's Subpoena.

(5) This case is dismissed from the docket, and the papers herein shall be placed among the ended causes.